



**Notification of  
REFERRAL DECISION – not controlled action if undertaken in a particular manner**

Eden Breakwater Wharf Extension, NSW (EPBC 2016/7828)

This decision is made under sections 75 and 77A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

**Proposed action**

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**person named in the referral** Department of Industry Skills and Regional Development  
ABN: 72 189 919 072

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**proposed action** To extend the existing Breakwater Wharf at Eden, New South Wales, as described in the referral received by the Department on 8 December 2016 (See EPBC Act referral 2016/7828).

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**Referral decision: Not a controlled action if undertaken in a particular manner**

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**status of proposed action** The proposed action is not a controlled action provided it is undertaken in the manner set out in this decision.

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**Person authorised to make decision**

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**Name and position** James Barker  
Assistant Secretary  
Assessments and Sea Dumping Branch

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**signature**

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**date of decision** 13 April 2017

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**manner in which proposed action must be taken** The following measures must be taken to avoid significant impacts on

- Listed threatened species and communities (sections 18 & 18A)
- Listed migratory species (sections 20 & 20A)
- Commonwealth marine areas (sections 23 & 24A)

To mitigate potential impacts, the person taking the action must implement the following monitoring approaches and procedures:

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1. **Piling Operation Procedures:**
    - a) **Pre-start Observation:** Marine mammal observers must visually monitor the **observation zone** for **whales** for a minimum of 30 minutes before the commencement of **piling**.
    - b) **Soft-Start Procedure:** If after the 30 minute **pre-start observation** no **whales** have been spotted within the **observation zone** or **shut-down zone** a **soft start procedure** may commence with a gradual increase in **piling** impact energy of no more than 50% of full impact energy for 10 minutes. The **soft start procedure** must be implemented after breaks in **piling** of 30 minutes or more.
    - c) **Stand by procedure:** When **whales** are spotted within the **observation zone** during the **soft start procedure** the operator of the **piling** equipment must be placed on **standby** to shut-down the **piling** rig and a **Marine Mammal Observer** should continuously monitor the **whales** in sight at all times.
    - d) **Normal Piling Procedure:** If no **whales** have been sighted during the soft-start procedure full impact **piling** may commence.
  
  2. **Re-strike testing:**
    - a) Before the commencement of **re-strike testing**, marine mammal observers must visually monitor the **observation zone** for **whales** for a minimum of 30 minutes. **Re-strike testing** may only commence if no whales are sighted in the **observation zone** or **shut-down zone** during this time.
    - b) A maximum of 20 full impact strikes are to be applied to each test pile.
  
  3. **Shut-Down requirements:**
    - a) If visibility is poor and **marine mammal observers** are unable to clearly identify objects to the full **observation zone** distance, a vessel or aircraft search must be conducted or the **piling** and **re-strike testing** postponed until visibility has improved.
    - b) **Piling** and **re-strike testing** is not permitted between 6.00pm and 7.00am.
    - c) If any **whales** are spotted within the **shut-down zone**, **piling** and **re-strike testing** must cease immediately or as soon as safe to do so until the **whales** move outside of the **shut-down zone**.
    - d) All **piling** and **re-strike testing** must cease for a minimum of 1 hour after the last sighting of **whales** within the **shut-down zone**. **Piling** and **re-strike testing** must recommence at the **pre-start observation** after the 1 hour shut-down has elapsed.
  
  4. **Vessel Speed Limits:**
    - a) All vessels associated with dredging and construction must travel at a speed of 10 knots or less within the port limits, en-route to, or at the disposal ground.
    - b) All cruise ships arriving at and departing from the **Eden Breakwater wharf** must be aware of the potential presence of whales and maintain a **suitable speed** within the Port of Eden limits to avoid collisions with whales.
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## Glossary

**Eden Breakwater Wharf:** The completed wharf as referred under reference EPBC2016-7828.

**Marine Mammal Observers:** Trained marine mammal observer, with demonstrated experience in the identification and management of **whales** and to undertake the observation of **whales** during **piling** and **re-strike testing**.

**Observation Zone:**

- a) During September, October and November a horizontal radius determined from the **piling** equipment of 2.2 kilometres.
- b) During January, February, March, April, May, June, July, August and December a horizontal radius determined from the **piling** equipment of 1.5 kilometres.

**Pre-start Observation:** As described by particular manner 1a, of this notice.

**Piling:** Any impact driving and/or vibro-driving.

**Re-strike testing:** testing of an installed pile to confirm that the pile has been installed to the appropriate engineering standards.

**Shut-Down Zone:**

- a) During September, October and November a horizontal radius determined from the **piling** equipment of 1.3 kilometres.
- b) During January, February, March, April, May, June, July, August and December a horizontal radius determined from the **piling** equipment of 1 kilometre.

**Soft-Start Procedure:** As described by particular manner 1b, of this notice.

**Standby:** advise **piling** contractors to the presence of **whales** and to prepare to shutdown **piling**, if necessary.

**Suitable Speed:** 10 knots or less, except in circumstances where the Port Harbour Master (or their Delegate) or a Pilot considers that a higher speed is necessary to maintain safe navigation in the Port.

**Whales:** species listed under the *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act).

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